

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 12, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SUNDANCE SLOPE, LLC, a Washington  
limited liability company,  
Plaintiff,  
v.

NO. 2:23-CV-00083-SAB

TROUT-BLUE CHELAN-MAGI, LLC, a  
Washington limited liability corporation;  
and EDWARD JOHNSON, former chief  
executive officer of Trout-Blue Chelan-  
MAGI, Inc. and Trout-Blue Chelan-MAGI,  
LLC,  
Defendants.

**PROTECTIVE ORDER**

Before the Court are Defendants' Motion for Reconsideration, ECF No. 104, and related Motion to Expedite, ECF No. 107, as well as Intervenor International Farming Corporation's Motion for Reconsideration, ECF No. 110. Plaintiff is represented by Carl Hueber, Christine Meegan, Collette C. Leland, and Darren Digiacinto. Defendants are represented by Nathan T. Alexander, Nathan Bishop, and Shawn Larsen-Bright. Intervenor International Farming Corporation, LLC is represented by Zachary Davison.

On October 17, 2024, a status hearing was held in Spokane, Washington

**PROTECTIVE ORDER # 1**

1 regarding the motions. At that hearing, the Court heard arguments from the parties  
2 and intervenor counsel regarding issues with discovery. The Court then indicated  
3 that it may enter a protective order if the parties could not reach an agreement  
4 regarding confidentiality. Following that hearing, the parties submitted separate  
5 proposed protective orders, as well as briefing as to how the proposed orders differ.  
6 Based on the arguments of the parties, the proposed protective orders, and all  
7 briefing on the matter, good cause exists to grant the motions for reconsideration  
8 and enter Defendants' proposed protective order.

9 Accordingly, **IT IS ORDERED:**

10 1. The stay imposed on September 25, 2024, ECF No. 108, is **LIFTED**.  
11 The deadlines set forth in the Court's Amended Scheduling Order, ECF No. 97, are  
12 reinstated

13 2. Defendants' Motion to Expedite, ECF No. 107, is **DENIED AS**  
14 **MOOT**.

15 3. Defendants' Motion for Reconsideration, ECF No. 104, is  
16 **GRANTED**.

17 4. Intervenor's Motion for Reconsideration, ECF No. 110, is  
18 **GRANTED**.

19 5. Pursuant to Federal Rule of Civil Procedure 26(c), and for good cause  
20 shown, the Court hereby enters this Protective Order governing discovery  
21 proceedings in this matter. Documents or information disclosed in discovery that a  
22 party or non-party reasonably and good faith believes to be confidential as set forth  
23 herein can be designated as confidential as set forth herein. **Nothing in this Order**  
24 **affects the applicable legal standards for the sealing of materials actually filed**  
25 **with the Court.**

26 1. "CONFIDENTIAL" MATERIAL

27 "Confidential" material shall include the following documents and  
28 tangible things produced or otherwise exchanged: financial

1 information; information regarding the business of non-parties  
2 including non-party growers; internal board or management level  
3 deliberations; proprietary data; employment information; and other  
4 similarly private, personal, confidential, proprietary, trade secret, or  
5 commercially sensitive information that the producing party or non-  
6 party must keep in confidence or in good faith believes could result in  
7 injury if publicly disclosed. The foregoing excludes information that  
8 is publicly known or can be ascertained from information that is  
9 readily available to the public.

## 10 2. SCOPE

11 The protections conferred by this Order cover not only confidential  
12 material (as defined above), but also (1) any information copied or  
13 extracted from confidential material; (2) all copies, excerpts,  
14 summaries, or compilations of confidential material; and (3) any  
15 testimony, conversations, or presentations by parties or their counsel  
16 that might reveal confidential material. However, the protections  
17 conferred by this Order do not cover information that is in the public  
18 domain or becomes part of the public domain through trial or  
19 otherwise.

## 20 3. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

21 3.1 Basic Principles. A receiving party may use confidential  
22 material that is disclosed or produced by another party or by a non-  
23 party in connection with this case only for prosecuting, defending, or  
24 attempting to settle this litigation. Confidential material may be  
25 disclosed only to the categories of persons and under the conditions  
26 described in this Order. Confidential material must be stored and  
27 maintained by a receiving party at a location and in a secure manner  
28 that ensures that access is limited to the persons authorized under this

1 Order.

2 3.2 Disclosure of “CONFIDENTIAL” Information or Items.

3 Unless otherwise ordered by the court or permitted in writing by the  
4 designating party, a receiving party may disclose any confidential  
5 material only to:

6 (a) the receiving party’s counsel of record in this  
7 action, as well as employees of counsel to whom it is reasonably  
8 necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in  
10 house counsel) of the receiving party to whom disclosure is  
11 reasonably necessary for this litigation, unless the parties agree that a  
12 particular document or material produced is for Attorney’s Eyes Only  
13 and is so designated;

14 (c) experts and consultants to whom disclosure is  
15 reasonably necessary for this litigation and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court, court personnel, and court reporters and  
18 their staff;

19 (e) copy or imaging services retained by counsel to  
20 assist in the duplication of confidential material, provided that counsel  
21 for the party retaining the copy or imaging service instructs the  
22 service not to disclose any confidential material to third parties and to  
23 immediately return all originals and copies of any confidential  
24 material;

25 (f) during their depositions, witnesses in the action to  
26 whom disclosure is reasonably necessary and who have signed the  
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
28 otherwise agreed by the designating party or ordered by the court.

1 Pages of transcribed deposition testimony or exhibits to depositions  
2 that reveal confidential material must be separately bound by the court  
3 reporter and may not be disclosed to anyone except as permitted under  
4 this Order;

5 (g) the author or recipient of a document containing  
6 the information or a custodian or other person who otherwise  
7 possessed or knew the information.

8 3.3 Filing Confidential Material. Before filing confidential  
9 material or discussing or referencing such material in court filings, the  
10 filing party shall confer with the designating party to determine  
11 whether the designating party will remove the confidential  
12 designation, whether the document can be redacted, or whether a  
13 motion to seal or stipulation and proposed order is warranted. During  
14 the meet and confer process, the designating party must identify the  
15 basis for sealing the specific confidential information at issue, and the  
16 filing party shall include this basis in its motion to seal, along with  
17 any objection to sealing the information at issue. A party who seeks to  
18 maintain the confidentiality of its information must establish the basis  
19 for sealing even if it is not the party filing the motion to seal. Failure  
20 to satisfy this requirement will result in the motion to seal being  
21 denied, in accordance with the strong presumption of public access to  
22 the Court's files.

23 4. DESIGNATING PROTECTED MATERIAL

24 4.1 Exercise of Restraint and Care in Designating Material  
25 for Protection. Each party or non-party that designates information or  
26 items for protection under this Order must take care to limit any such  
27 designation to specific material that qualifies under the appropriate  
28 standards. The designating party must designate for protection only

1 those parts of material, documents, items, or oral or written  
2 communications that qualify, so that other portions of the material,  
3 documents, items, or communications for which protection is not  
4 warranted are not swept unjustifiably within the ambit of this Order.  
5 Mass, indiscriminate, or routinized designations are prohibited.  
6 Designations that are shown to be clearly unjustified or that have been  
7 made for an improper purpose (*e.g.*, to unnecessarily encumber or  
8 delay the case development process or to impose unnecessary  
9 expenses and burdens on other parties) expose the designating party to  
10 sanctions. If it comes to a designating party's attention that  
11 information or items that it designated for protection do not qualify  
12 for protection, the designating party must promptly notify all other  
13 parties that it is withdrawing the mistaken designation.

14 4.2 Manner and Timing of Designations. Except as otherwise  
15 provided in this Order (see, *e.g.*, second paragraph of section 5.2(b)  
16 below), or as otherwise stipulated or ordered, disclosure or discovery  
17 material that qualifies for protection under this Order must be clearly  
18 so designated before or when the material is disclosed or produced.

19 (a) Information in documentary form: (*e.g.*, paper or  
20 electronic documents and deposition exhibits, but excluding  
21 transcripts of depositions or other pretrial or trial proceedings), the  
22 designating party must affix the word "CONFIDENTIAL" to each  
23 page that contains confidential material. If only a portion or portions  
24 of the material on a page qualifies for protection, the producing party  
25 also must clearly identify the protected portion(s) (*e.g.*, by making  
26 appropriate markings in the margins).

27 (b) Testimony given in deposition or in other pretrial  
28 proceedings: the parties and any participating non-parties must

1 identify on the record, during the deposition or other pretrial  
2 proceeding, all protected testimony, without prejudice to their right to  
3 so designate other testimony after reviewing the transcript. Any party  
4 or non-party may, within fifteen days after receiving the transcript of  
5 the deposition or other pretrial proceeding, designate portions of the  
6 transcript, or exhibits thereto, as confidential. If a party or non-party  
7 desires to protect confidential information at trial, the issue should be  
8 addressed during the pre-trial conference.

9 (c) Other tangible items: the producing party must  
10 affix in a prominent place on the exterior of the container or  
11 containers in which the information or item is stored the word  
12 “CONFIDENTIAL.” If only a portion or portions of the information  
13 or item warrant protection, the producing party, to the extent  
14 practicable, shall identify the protected portion(s).

15 4.3 Inadvertent Failures to Designate. If timely corrected, an  
16 inadvertent failure to designate qualified information or items does  
17 not, standing alone, waive the designating party’s right to secure  
18 protection under this Order for such material. Upon timely correction  
19 of a designation, the receiving party must make reasonable efforts to  
20 ensure that the material is treated in accordance with the provisions of  
21 this Order.

## 22 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 5.1 Timing of Challenges. Any party or non-party may  
24 challenge a designation of confidentiality at any time. Unless a  
25 prompt challenge to a designating party’s confidentiality designation  
26 is necessary to avoid foreseeable, substantial unfairness, unnecessary  
27 economic burdens, or a significant disruption or delay of the litigation,  
28 a party does not waive its right to challenge a confidentiality

1 designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3 5.2 Meet and Confer. The parties must make every attempt to  
4 resolve any dispute regarding confidential designations without court  
5 involvement. Any motion regarding confidential designations or for a  
6 protective order must include a certification, in the motion or in a  
7 declaration or affidavit, that the movant has engaged in a good faith  
8 meet and confer conference with other affected parties in an effort to  
9 resolve the dispute without court action. The certification must list the  
10 date, manner, and participants to the conference. A good faith effort to  
11 confer requires a face-to-face meeting or a telephone conference.

12 5.3 Judicial Intervention. If the parties cannot resolve a  
13 challenge without court intervention, the designating party may file  
14 and serve a motion to retain confidentiality. The burden of persuasion  
15 in any such motion shall be on the designating party. Frivolous  
16 challenges, and those made for an improper purpose (*e.g.*, to harass or  
17 impose unnecessary expenses and burdens on other parties) may  
18 expose the challenging party to sanctions. All parties shall continue to  
19 maintain the material in question as confidential until the court rules  
20 on the challenge.

21 6. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
22 PRODUCED IN OTHER LITIGATION

23 If a party is served with a subpoena or a court order issued in other  
24 litigation that compels disclosure of any information or items  
25 designated in this action as “CONFIDENTIAL,” that party must:

26 (a) promptly notify the designating party in writing  
27 and include a copy of the subpoena or court order;

28 (b) promptly notify in writing the party who caused



1 the subpoena or order to issue in the other litigation that some or all of  
2 the material covered by the subpoena or order is subject to this Order.  
3 Such notification shall include a copy of this Order; and

4 (c) cooperate with respect to all reasonable procedures  
5 sought to be pursued by the designating party whose confidential  
6 material may be affected.

7 7. UNAUTHORIZED DISCLOSURE OF PROTECTED  
8 MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has  
10 disclosed confidential material to any person or in any circumstance  
11 not authorized under this Order, the receiving party must immediately  
12 (a) notify in writing the designating party of the unauthorized  
13 disclosures, (b) use its best efforts to retrieve all unauthorized copies  
14 of the protected material, (c) inform the person or persons to whom  
15 unauthorized disclosures were made of all the terms of this Order, and  
16 (d) request that such person or persons execute the “Acknowledgment  
17 and Agreement to Be Bound” that is attached hereto as Exhibit A.

18 8. INADVERTENT PRODUCTION OF PRIVILEGED OR  
19 OTHERWISE PROTECTED MATERIAL

20 When a producing party gives notice to receiving parties that certain  
21 inadvertently produced material is subject to a claim of privilege or  
22 other protection, the obligations of the receiving parties are those set  
23 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
24 is not intended to modify whatever procedure may be established in  
25 an e-discovery order or agreement that provides for production  
26 without prior privilege review. It is further ordered that pursuant to  
27 Fed. R. Evid. 502(d), the production of any documents, electronically  
28 stored information (ESI) or information, whether inadvertent or

1 otherwise, in this proceeding shall not, for the purposes of this  
2 proceeding or any other federal or state proceeding, constitute a  
3 waiver by the producing party of any privilege applicable to those  
4 documents, including the attorney-client privilege, attorney work-  
5 product protection, or any other privilege or protection recognized by  
6 law. This Order shall be interpreted to provide the maximum  
7 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R.  
8 Evid. 502(b) do not apply. Nothing contained herein is intended to or  
9 shall serve to limit a party's right to conduct a review of documents,  
10 ESI or information (including metadata) for relevance, responsiveness  
11 and/or segregation of privileged and/or protected information before  
12 production. Information produced in discovery that is protected as  
13 privileged or work product shall be immediately returned to the  
14 producing party.

15 9. NON-TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all  
17 appeals, each receiving party must return all confidential material to  
18 the producing party, including all copies, extracts, and summaries  
19 thereof. Alternatively, the parties may agree upon appropriate  
20 methods of destruction.

21 Notwithstanding this provision, counsel are entitled to retain one  
22 archival copy of all documents filed with the court, trial, deposition,  
23 and hearing transcripts, correspondence, deposition and trial exhibits,  
24 expert reports, attorney work product, and consultant and expert work  
25 product, even if such materials contain confidential material.

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